

AMENDED IN SENATE APRIL 2, 2001
AMENDED IN SENATE MARCH 15, 2001
AMENDED IN SENATE FEBRUARY 27, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

SENATE BILL

No. 39

Introduced by Senator Speier

February 8, 2001

An act to amend Sections 216 , 362, and 431 of, and to add Section 761.3 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Speier. Public Utilities.

(1) Under existing law, ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator is not sufficient to make a corporation or person a public utility under the Public Utilities Act, a violation of which is a crime.

This bill would delete this provision. To the extent that this change would expand the class of utilities subject to the act, this bill would impose a state-mandated local program by changing the definition of an existing crime.

(2) Existing law requires the Public Utilities Commission, in proceedings, to ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power.

This bill would require the commission to require that generation facilities located in California that have been disposed of pursuant to specified existing law are operated by the persons or corporations who own or control them in a manner that ensures their availability to maintain the reliability of the electric supply system. The bill would authorize the commission to accomplish this by issuing orders and directives that it determines to be necessary and appropriate, after a hearing. The bill would authorize the commission to ensure electric service reliability by prohibiting economic or physical withholding of the output of a divested generation facility from delivery to or for the benefit of California end users.

(3) Existing law requires the commission to annually determine a fee to be paid by public utilities, except as specified, to produce a total amount equal to that amount established in the authorized commission budget for the same year.

This bill would require the commission to annually determine a fee to be paid by certain generation facilities subject to the jurisdiction of the commission, or upon which the commission imposes requirements, as prescribed. Because a violation of a requirement of the commission is a crime, this bill would impose a state-mandated local program by creating a new crime.

(4) Under existing law, the commission has regulatory authority over public utilities, including electric corporations.

This bill would authorize the commission, in consultation with the applicable control area operator, to prescribe inspection, maintenance, and operating practices and procedures for any electric plant used to produce or generate electric energy located in the State of California that is necessary to ensure public health and safety and electric service reliability and adequacy. *The bill would exempt from this provision, facilities that generate electric energy from other than a conventional power source, as defined, when the owner is a private energy producer, as defined.*

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Electric generating facilities and powerplants in California are essential facilities for maintaining and protecting the public health and safety of California residents and businesses.

(b) It is in the public interest to ensure that electric generating facilities and powerplants located in California are effectively and appropriately maintained and efficiently operated.

(c) Owners and operators of electric generating facilities and powerplants are public utilities subject to the control of the Legislature.

SEC. 2. Section 216 of the Public Utilities Code is amended to read:

216. (a) “Public utility” includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject

1 to the jurisdiction, control, and regulation of the commission and
2 the provisions of this part.

3 (d) Ownership or operation of a facility that employs
4 cogeneration technology or produces power from other than a
5 conventional power source or the ownership or operation of a
6 facility which employs landfill gas technology does not make a
7 corporation or person a public utility within the meaning of this
8 section solely because of the ownership or operation of that
9 facility.

10 (e) Any corporation or person engaged directly or indirectly in
11 developing, producing, transmitting, distributing, delivering, or
12 selling any form of heat derived from geothermal or solar
13 resources or from cogeneration technology to any privately owned
14 or publicly owned public utility, or to the public or any portion
15 thereof, is not a public utility within the meaning of this section
16 solely by reason of engaging in any of those activities.

17 (f) The ownership or operation of a facility that sells
18 compressed natural gas at retail to the public for use only as a
19 motor vehicle fuel, and the selling of compressed natural gas at
20 retail from that facility to the public for use only as a motor vehicle
21 fuel, does not make the corporation or person a public utility
22 within the meaning of this section solely because of that
23 ownership, operation, or sale.

24 (g) The ownership, control, operation, or management of an
25 electric plant used for direct transactions or participation directly
26 or indirectly in direct transactions, as permitted by subdivision (b)
27 of Section 365, sales into the Power Exchange referred to in
28 Section 365, or the use or sale as permitted under subdivisions (b)
29 to (d), inclusive, of Section 218, shall not make a corporation or
30 person a public utility within the meaning of this section solely
31 because of that ownership, participation, or sale.

32 SEC. 3. Section 362 of the Public Utilities Code is amended
33 to read:

34 362. (a) In proceedings pursuant to Section 455.5, 851, or
35 854, the commission shall ensure that facilities needed to maintain
36 the reliability of the electric supply remain available and
37 operational, consistent with maintaining open competition and
38 avoiding an overconcentration of market power. In order to
39 determine whether the facility needs to remain available and
40 operational, the commission shall utilize standards that are no less

1 stringent ~~that~~ *than* the Western Systems Coordinating Council and
2 North American Electric Reliability Council standards for
3 planning reserve criteria.

4 (b) The commission shall require that generation facilities
5 located in California that have been disposed of in proceedings
6 pursuant to Section 851 are operated by the persons or
7 corporations who own or control them in a manner that ensures
8 their availability to maintain the reliability of the electric supply
9 system. The commission may accomplish this by issuing orders
10 and directives that it determines to be necessary and appropriate,
11 after a hearing. The commission may *prevent an*
12 *overconcentration of market power and* ensure electric service
13 reliability by prohibiting economic or physical withholding of the
14 output of a divested generation facility from delivery to or for the
15 benefit of California end users.

16 SEC. 4. Section 431 of the Public Utilities Code is amended
17 to read:

18 431. (a) The commission shall annually determine a fee to be
19 paid by every electrical, gas, telephone, telegraph, water, sewer
20 system, and heat corporation and every other public utility
21 providing service directly to customers or subscribers and subject
22 to the jurisdiction of the commission other than a railroad, except
23 as otherwise provided in Article 2 (commencing with Section
24 421). The commission shall also annually determine a fee to be
25 paid by every generation facility subject to the jurisdiction of the
26 commission pursuant to subdivision (b) of Section 362 or upon
27 which the commission imposes requirements pursuant to Section
28 761.3.

29 (b) The commission shall establish the annual fee to produce a
30 total amount equal to that amount established in the authorized
31 commission budget for the same year, including adjustments for
32 increases in employee compensation, other increases appropriated
33 by the Legislature, and an appropriate reserve to regulate public
34 utilities less the amount to be paid from special accounts or funds
35 pursuant to Section 402, reimbursements, federal funds, and any
36 other revenues, and the amount of unencumbered funds from the
37 preceding year.

38 (c) This article does not apply to any electrical cooperative as
39 defined in Chapter 5 (commencing with Section 2776) of Part 2.

(d) This article applies to radiotelephone utilities as defined in Section 4902 as those provisions read on December 31, 1984.

SEC. 5. Section 761.3 is added to the Public Utilities Code, to read:

761.3. (a) Notwithstanding Section 216, the commission, in consultation with the applicable control area operator, may prescribe inspection, maintenance, and operating practices and procedures for any electric plant used to produce or generate electric energy located in the State of California that is necessary to ensure public health and safety and electric service reliability and adequacy. Nothing in this section authorizes the commission to regulate rates for wholesale electric energy transactions in interstate commerce.

(b) Subdivision (a) does not apply to facilities that generate electric energy from other than a conventional power source, as defined in Section 2805, when the owner is a private energy producer, as defined in Section 2802.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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